



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

November 10, 1997

To: The Members
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair

MEMO

On November 7, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 97-110, relating to the regulation of certified and licensed appraisers.

The deadline for committee action on this rule is **December 5, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **November 20, 1997**.

Assembly

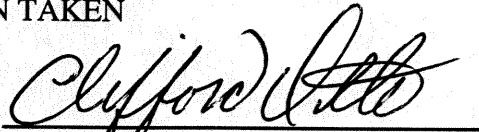
Committee Report

The committee on **Consumer Affairs**, reports and recommends:

Clearinghouse Rule 97-110

Relating to the regulation of certified and licensed appraisers.
Submitted by the Department of Regulation and Licensing.

December 5, 1997 - NO ACTION TAKEN



Representative Clifford Otte
Chair



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**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION	:	AND LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 97-101)

TO: Ben Brancel
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form proposed rules relating to the employment of personal assistants by real estate salespersons and broker-employees.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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MADISON, WISCONSIN 53708-8935
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Administrative Rules in Final Draft Form

Regulation and Licensing

Rule:

**RL 17.02 (2m), (3), (3m), (5),
RL 17.03 (2) and RL 17.12**

Relating to:

**Employment of Personal
Assistants (Real Estate)**

**Clearinghouse Rule:
No. 97-101**

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

IN THE MATTER OF RULE-MAKING :	
PROCEEDINGS BEFORE THE :	REPORT TO THE LEGISLATURE
DEPARTMENT OF REGULATION :	ON CLEARINGHOUSE RULE 97-101
AND LICENSING :	(s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

It is becoming increasingly common in this state, as well as nationally, for real estate salespersons and for brokers who are employed by other real estate brokers, to employ individuals to provide administrative, clerical or personal services to the salesperson or broker-employee. These services may include such tasks as answering the telephone, scheduling appointments and typing documents prepared by the licensees. The use of unlicensed personal assistants has raised a number of questions about the types of activities which the unlicensed assistants may perform and the role of the broker who owns and operates the business. Such broker-employers have expressed a need to be involved in establishing the conditions of employment between their salespersons or broker-employees and the unlicensed personal assistants, because, ultimately, the broker-employer can be held legally responsible for the acts of all of these people.

One significant issue was a source of considerable discussion during the rule-making process. The question was whether unlicensed personal assistants may assist at open houses without being accompanied by a real estate licensee. The decision turns on whether personal assistants working alone at open houses can avoid negotiating with some people and whether they must be licensed as real estate salespersons.

These proposed rules were necessary to recognize the role of personal assistants and to define the term. These proposed rules answer the question about an unlicensed assistant assisting at open houses, by stating that the licensed personal assistant may assist a licensee at an open house, but not without a licensee present. These proposed rules also

enumerate the requirements relating to a written agreement between an unlicensed personal assistant and the salesperson or broker who employs him or her, as well as the broker who employs the salesperson or the broker.

V. NOTICE OF PUBLIC HEARING:

A public hearing was co-chaired by Marlene Cummings, Secretary of the Department, and James Imhoff, Jr., Chairman of the Real Estate Board, on August 28, 1997. Secretary Cummings informed those present that the Small Business Review Advisory Committee, appointed by her under section 15.04, Stats., reviewed the rule proposal and concluded that it unduly restricted unlicensed personal assistants by permitting them to conduct open houses only when a real estate licensee was present. She said that the committee's position was that this proposed policy had an adverse impact on small businesses.

Four persons spoke at the hearing, and presented testimony as follows:

James Spellman, a member of the Small Business Review Advisory Committee, presented the position of the committee. He reviewed the committee's position, as stated in a letter submitted to Secretary Cummings and the board before the meeting. The committee stated the proposed s. RL 17.12 (2) is unnecessary to protect the public and interferes with free enterprise. He noted that assistants already disseminate real estate information by phone, fax, and internet without a supervisor present and this practice has not precipitated abuse. He suggested the definition of "negotiate" should be reviewed.

Janet Sather (Madison) and Jacci See (Madison) recommended that the hearing draft remain unchanged and that unlicensed personal assistants not be allowed to conduct open houses without a licensee present.

Richard Staff of the Wisconsin Realtors Association (Madison), also spoke in favor of the proposed rules and urged the department to prohibit unlicensed personal assistants from conducting open houses without a real estate licensee present. He refuted the position of the Small Business Review Advisory Committee and submitted copies of letters which he had received from 38 real estate brokers throughout the state. The correspondents also urged the department to prohibit unlicensed personal assistants from conducting open houses. Many of them said that the proposed rules do not have an adverse impact on small businesses, but that large businesses would actually be favored over small businesses without the prohibition in the proposed rules. The correspondents stated that they themselves have small businesses.

The department subsequently concluded that the rule should remain essentially as in the hearing draft, but that the note following s. RL 17.12 should be changed to read: "This rule does not prevent an owner from showing or holding an open house regarding his or her own residence, for example, or from permitting a non-compensation person, such as a relative or neighbor, from showing or holding an open house on the owner's behalf." The note in the hearing draft was modified to allay the concerns of some people that the

proposed rules would prevent an owner from showing or holding an open house regarding his or her own residence. Section 452.01 (2), Stats., addresses this question; however, the note provides more clarity for a layperson.

After the hearing on the proposed rules, the Small Business Review Advisory Committee conducted another meeting and agreed that the proposed rule does not have an adverse impact on small businesses.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Following the order of the recommendations of the Council, note the following:

4. The phrase "under ch. 452" was added, as and where suggested.

4.b. The Clearinghouse suggested that s. RL 17.03 (2) also be amended in the proposed rule as it currently states that a broker employed by another broker may not hire other real estate licensees; and that the general requirements in proposed s. RL 17.12 be referenced.

The intent of that rule is to make sure that broker-employees do not hire other licensees to negotiate real estate transactions. The new rule, however, is intended to allow them to hire "unlicensed personal assistants," the definition of which includes licensees who do not negotiate. Accordingly, the department has added a new section modifying s. RL 17.03 (2), to affirmatively permit broker-employees and salespersons to hire other licensees only in the capacity of "unlicensed personal assistants." The modification also refers to the conditions of such employment as provided in proposed s. RL 17.12.

The Clearinghouse also suggests that the Note to s. RL 17.12 should refer to s. RL 17.03. However, as explained under Section V (above), the Note has been replaced by another note. Accordingly, the Clearinghouse comment is no longer applicable.

5.a. The Clearinghouse appropriately notes that a written agreement should obviously exist between a broker-employee/salesperson and broker-employer before an unlicensed personal assistant is hired. The department has added language to that effect in s. RL 17.12 (1).

5.b. The Clearinghouse believes that s. RL 17.12 (2) may be too narrowly worded by referring only to an unlicensed personal assistant's "assisting" at an open house, and suggests we may want to say "conducting or participating in" the open house in light of the language in the Analysis. The department concluded that the language in the Analysis of the hearing draft was too broad. It may have implied that an unlicensed personal assistant may "conduct" an open house, including the negotiation of sales with the public, if a licensee is present. Since the department has concluded that an unlicensed personal assistant should not be permitted to "conduct" an open house under any circumstances, including when a licensee is present, the department kept the "assist" language in the rule and modified the Analysis language.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 97-101)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to *amend* RL 17.02 (3) and 17.03 (2); and to *create* RL 17.02 (2m), (3m), (5) and 17.12, relating to the employment of personal assistants by real estate salespersons and broker-employees.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 452.07, Stats.

Statutes interpreted: ss. 452.01 (5m), 452.14 (3) (f), (g) and (j), and 452.19, Stats.

This proposed rule-making order of the Department of Regulation and Licensing relates to the employment and use of personal assistants by licensed real estate salespersons and brokers who are themselves employed by real estate brokers. It is becoming increasingly common in this state, as well as nationally, for real estate salespersons and broker-employees of other real estate brokers to employ individuals to provide administrative, clerical or personal services to the salesperson or broker-employee. These services may include such tasks as answering the telephone, scheduling appointments and typing documents prepared by the licensee.

The proposed rules: 1) formally recognize the practice of salespersons and broker-employees in employing individuals to assist the licensees in carrying out their responsibilities for their broker-employers, 2) assure that broker-employers are informed that their salespersons or broker-employees have hired personal assistants, and 3) protect the interests of the licensees, personal assistants and the public by requiring that the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the salesperson or broker-employee and broker-employer for supervision of the personal assistant's activities, will be set forth in writing.

The proposed rules also prohibit unlicensed personal assistants from assisting at an open house for the sale of real estate or a business without being accompanied by a real estate licensee, as it is deemed nearly impossible for an individual to hold an open house without engaging in negotiations with a prospective purchaser.

The proposed rules were submitted to the Real Estate Board for comment, as required under s. 452.07 (2), Stats. The Real Estate Board supports their promulgation.

TEXT OF RULE

SECTION 1. RL 17.02 (2m) is created to read:

RL 17.02 (2m) "Broker-employee" means a broker who is employed to provide services for another broker.

SECTION 2. RL 17.02 (3) is amended to read:

RL 17.02 (3) "Broker-employer" means a sole proprietor, ~~a partnership or a corporation~~ or business entity that employs another broker or salesperson to provide services to the broker.

SECTION 3. RL 17.02 (3m) and (5) are created to read:

RL 17.02 (3m) "Open house" means a showing of real estate open to the public for viewing without an individual appointment.

(5) "Unlicensed personal assistant" means a person not licensed under ch. 452, Stats., or licensed but not employed for the purpose of providing services for which a license is required under ch. 452, Stats., who on behalf and under the direction of a licensee, provides the licensee with administrative, clerical or personal services for which a license under ch. 452, Stats., is not required.

SECTION 4. RL 17.03 (2) is amended to read:

RL 17.03 (2) A broker or salesperson who is employed by a broker-employer may ~~not~~ personally employ licensed persons only as unlicensed personal assistants within the meaning of s. RL 17.02 (5), subject to the provisions in s. RL 17.12.

SECTION 5. RL 17.12 is created to read:

RL 17.12 UNLICENSED PERSONAL ASSISTANTS. (1) A real estate salesperson or broker-employee, prior to employing an unlicensed personal assistant, shall enter into a written agreement with his or her broker-employer, setting forth the duties of the unlicensed personal assistant, the manner in which the personal assistant will be compensated for his or her services and the responsibilities between the salesperson or broker-employee and broker-employer for supervision of the personal assistant's activities.

(2) An unlicensed personal assistant may not assist a licensee at an open house for the sale of real estate or a business without the direct, on-premises supervision and presence of a real estate licensee, and may not provide any services at an open house for which a license under ch. 452, Stats., is required.

Note: This rule does not prevent an owner from showing or holding an open house regarding his or her own residence, for example, or from permitting a non-compensation person, such as a relative or neighbor, from showing or holding an open house on the owner's behalf.

(END OF TEXT)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Marlene A. Cummings, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

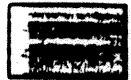
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\r117
10/28/97

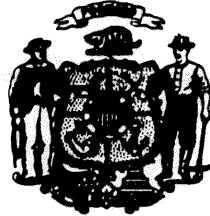
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 97-101

AN ORDER to amend RL 17.02 (3); and to create RL 17.02 (2m), (3m) and (5) and 17.12, relating to the employment of personal assistants by real estate salespersons and broker-employees.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

07-18-97 RECEIVED BY LEGISLATIVE COUNCIL.
08-12-97 REPORT SENT TO AGENCY.

RS:DD:jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☐

NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☐

NO ☒

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

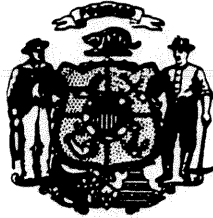
NO ☒

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 97-101

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

4. Adequacy of References to Related Statutes, Rules and Forms

✓ a. In s. RL 17.02 (5), it is recommended that "under ch. 452" be inserted following the first "licensed."

b. Consideration should be given to amending s. RL 17.03 (2) to reflect that an unlicensed personal assistant, as authorized under new s. RL 17.12, may in fact be a "licensed person" as referred to in s. RL 17.03 (2). [See the definition of "unlicensed personal assistant" in s. RL 17.02 (5).] Further, since s. RL 17.03 generally deals with limitations on broker-employees and real estate salespersons, a general cross-reference in the section to s. RL 17.12 may be appropriate. Similarly, the Note to s. RL 17.12 (2) should refer to s. RL 17.03.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. It appears implicit in s. RL 17.12 (1) that before a real estate salesperson or broker-employee may employ an unlicensed personal assistant, he or she must enter into a written agreement with his or her broker-employer. It is suggested that the provision be worded to expressly state the requirement.

b. Section RL 17.12 (2) may be worded too narrowly. The department's analysis refers to an unlicensed personal assistant "conducting" an open house. Subsection (2) refers to "assisting" a licensee at an open house. Perhaps reference to "conducting or participating in" an open house is more consistent with the intent.